

REMARKS

This is a full and timely response to the outstanding final Office Action mailed July 21, 2004. Claims 1-24 remain pending in the present application. Applicants are merely clarifying the claims at this point. Applicants respectfully traverse all of the rejections of the Office Action. Reconsideration and allowance of the application and presently pending claims 1-24 are respectfully requested. Applicants should not be presumed to agree with any statements made by the Examiner in the Office Action unless otherwise specifically indicated by the Applicants.

I. Examiner's Interview

Applicants' attorney, Minh Nguyen, spoke by phone with the Examiner on October 6, 2004, with regard to claim 1 and the use of the word "frequency." Applicants' attorney pointed out in the Office Action that the word "frequency" of claim 1 was interpreted as transmitting frequency through a transmission line. However, Applicants were using the word "frequency" in relation to the number of times users use the television option menu. The Examiner agreed that it would be helpful for Applicants to submit an amendment of the independent claims to better clarify the term. The Examiner indicated that a new search might be required in light of the amendment to the independent claims.

II. Request for Withdrawal of Final Rejection

Applicants respectfully request withdrawal of the Final Rejection because the meaning of the word "frequency" was not appreciated as recited in the claims. The Office Action indicated that the word "frequency" in the independent claims 1, 5, 9, 14, 19, 21, and 23 is interpreted as "tuning to frequency of the service source." However, for example, claim 1 recited "the television menu option is selected to be included in the television menu based on the identified television service and the frequency that the television menu option is used by the user." The specification of the application on page 11, line 29 – page 12, line 2 recites as follows:

"These factors include the actual and relative frequency that the menu option will be selected by users, whether a media provider desires such menu option to be provided to users accessing a service provided by the media provider, the feasibility of providing the functionality identified by the menu option, and alternative methods by which users may access the functionality provided by the menu option."

Applicants respectfully believe that based on the grammar used in the claims and the specification, the word "frequency" should not have been interpreted as "tuning to frequency of

the service source" as indicated in the Office Action. Applicants have amended the claims to better clarify the limitation by changing the phrase from "frequency that the television menu option is used by the user" to "the likelihood that the television menu option will be used by the user." Accordingly, Applicants respectfully request that the final rejection be withdrawn. Applicants believe that in fairness a new search or examination should not be required because of the misinterpretation.

II. Response to Claim Rejection Under 35 U.S.C. §103

Claims 1-24 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 5,850,218, to *LaJoie*, et al. in view of U.S. Patent No. 5,898,919, to *Yuen*. Claims 19-22 stand rejected under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent No. 6,662,007, to *Yuen*.

In order for a claim to be properly rejected under 35 U.S.C. §103, the teachings of the prior art reference must suggest all features of the claim invention to one of ordinary skill in the art. *See, e.g., In re Dow Chemical*, 837 F.2d 469, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 642 F.2d 413, 208 U.S.P.Q. 871, 881 (C.C.P.A. 1981).

A. Claims 1, 5, 9, 14, 19, 21, and 23

Claim 1 recites "the television menu option is selected to be included in the television menu based on the identified television service and the likelihood that the television menu option will be used by the user." (Emphasis Added). Claim 5 recites "the television menu option is selected to be included in the television menu based on the identified television service and the likelihood that the television menu option will be used by the user." (Emphasis Added). Claim 9 recites "the television menu option is selected to be included in the television menu based on the identified type of television service and the likelihood that the television menu option will be used by the user." (Emphasis Added). Claim 14 recites "the television menu option is selected to be included in the television menu based on the identified type of television service and the likelihood that the television menu option will be used by the user." (Emphasis Added). Claim 19 recites "the television menu option is selected to be included in the television menu based on the identified type of television channel and the likelihood that the television menu option will be used by the user." (Emphasis Added). Claim 21 recites "the television menu option is selected to be included in the television menu based on the identified

type of television channel and the likelihood that the television menu option will be used by the user.” (Emphasis Added). Claim 23 recites “the television menu option is selected to be included in the television menu based on the identified type of television service and the likelihood that the television menu option will be used by the user.” (Emphasis Added).

The Office Action states on page 2 with reference to claims 1 and 14 and page 3 with reference to claims 5, 9, 19, 21, and 23 as follows:

“It should be noted that the television service is selected based on the identified television service and the frequency. For instance, channel 14 at a certain frequency is associated with NVOD service, channel 15 at a certain frequency is associated with VOD service...etc – see col. 16, lines 10-28.”

The Office Action indicated that the word “frequency” in the independent claims 1, 5, 9, 14, 19, 21, and 23 is interpreted as “tuning to frequency of the service source.” Applicants respectfully submit that the independent claims have been amended to better clarify the limitation by changing the word “frequency” to the “likelihood.” Applicants respectfully submit that the Office Action did not address the limitation of a television menu option is based the likelihood the television menu option is used by the user. Applicants also respectfully submit that the cited references fail to disclose, teach, or suggest the above-quoted features of claims 1, 5, 9, 14, 19, 21, and 23. Consequently, a *prima facie* case of obviousness cannot be established. Applicants respectfully request that claims 1, 5, 9, 14, 19, 21, and 23 be allowed for at least this reason, among others.

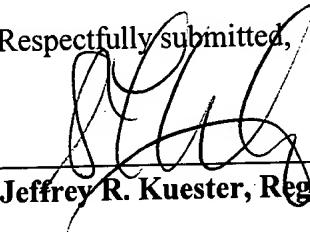
B. Claims 2-4, 6-8, 10-13, 15-18, 20, 22 and 24

Because independent claims 1, 5, 9, 14, 19, 21, and 23 are allowable over the cited art of record, dependent claims 2-4, 6-8, 10-13, 15-18, 20, 22 and 24 are allowable as a matter of law for at least the reason that dependent claims 2-4, 6-8, 10-13, 15-18, 20, 22 and 24 contain all steps/features/elements of their respective independent base claims. *See, e.g., In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Accordingly, Applicants respectfully request that the rejection to dependent claims 2-4, 6-8, 10-13, 15-18, 20, 22 and 24 be withdrawn for this reason alone, among others.

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1-24 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,


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